

SUMMARY OF ETHICS RULES

2005



ETHICS DIVISION
Office of the
Assistant General Counsel
for Administration
202-482-5384
ethicsdivision@doc.gov

UNITED STATES DEPARTMENT OF COMMERCE

PUBLIC SERVICE IS A PUBLIC TRUST

As a Department of Commerce employee, you have been placed in a position of trust and are held to a high standard of ethical conduct. This handout contains a summary of the rules set forth in conflict of interest statutes and the *Standards of Ethical Conduct for Employees of the Executive Branch*. You should retain this handout for use as a reference source.

Office of the Assistant General Counsel for Administration

To obtain legal advice regarding ethics issues, contact the:

Ethics Division at 202-482-5384 (or ethicsdivision@doc.gov) for advice regarding conflict of interest laws and rules of conduct.

To obtain legal advice regarding other administrative law issues, call the following offices.

Employment and Labor Law Division at 202-482-5017 – for advice regarding employment law and labor law issues.

General Law Division at 202-482-5391 – for advice regarding appropriations laws, joint projects, preservation and release of documents, and general administrative law issues.

Designated Agency Ethics Official: Barbara S. Fredericks, Assistant General Counsel for Administration

Alternate Designated Agency Ethics Official: David Maggi, Chief, Ethics Division

Office of Inspector General – The Ethics Division provides advice but does not investigate allegations of violations of law. To report fraud, waste, abuse, or other violations of law, or to request an investigation, call the Office of Inspector General HotLine at 800-424-5197 or 202-482-2495 or e-mail hotline@oig.doc.gov.

GENERAL ETHICAL PRINCIPLES

1. *Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.*
2. *Employees shall not hold financial interests that conflict with the conscientious performance of duty.*
3. *Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.*
4. *An employee shall not, except as permitted in ethics regulations, solicit or accept any gift of other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or non-performance of the employee's duties.*
5. *Employees shall put forth honest effort in the performance of their duties.*
6. *Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.*
7. *Employees shall not use public office for private gain.*
8. *Employees shall act impartially and not give preferential treatment to any private organization or individual.*
9. *Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.*
10. *Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.*
11. *Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.*
12. *Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.*
13. *Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.*
14. *Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in ethics regulations. Whether particular situations create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.*

FINANCIAL CONFLICTS OF INTEREST

Principle: No Self-Dealing

General Rule. You may not, as part of your Government duties, participate in any matter that would have a direct and predictable effect on your financial interests. This rule applies regardless of whether the matter at issue involves specific identifiable parties or involves a broad policy that affects many entities. If you have such interests, you must disqualify yourself from participating in the matter, unless an exemption applies or you are granted a waiver.

Financial Interests of Relatives and Business Associates. The financial interests of some persons are considered so intertwined with your own that they are attributed to you for purposes of the rule forbidding you from participating in matters affecting your interests. These include the financial interests of your spouse, minor children, general partners, non-Federal employers, and prospective employers (including persons with whom you are negotiating for employment); groups and organizations with which you serve as an officer, director, or trustee; and members of your household. The household members' interests are included under an ethics regulation; the others are covered by a criminal statute.

Exemptions. Exemptions permit you to participate in matters affecting a financial interest if the financial interest is a:

- P holding in a diversified mutual fund;
- P holding in a sector-specific mutual fund (a fund which, as described in the fund's prospectus, concentrates its investments in a particular industry sector or geographic area) if the value of the fund (and of other sector-specific funds that invest in the same sector) is \$50,000 or less;
- P publicly-traded stock or bond holding of \$15,000 or less in a company if the company is a party to a matter (or \$25,000 or less if the company is not a party to a matter) with regard to a specific-party matter; or
- P publicly-traded stock or bond holding of \$25,000 or less in a company with regard to broad policy matters (if total holdings in the industry or group affected by the matter are \$50,000 or less).

Waivers. If you serve overseas, you may obtain a waiver for interests that are not covered by the exemptions but which are not substantial in value (i.e., are \$50,000 or less). Contact the Ethics Division at 202-482-5384 to seek advice concerning such a waiver.

APPEARANCES OF BIAS (NON-FINANCIAL CONFLICTS OF INTEREST)

Basic Principle: No Special Favors

General Rule. You may not participate in matters in which certain persons with whom you have close ties (“covered relationships”) are parties or are representing parties, if participation would cause an appearance of loss of impartiality. Persons with whom you have a “covered relationship” include:

- P persons with whom you are seeking business;
- P members of your household;
- P close relatives;
- P employers and clients of your parents, dependent children, and spouse (and their prospective employers and clients);
- P former non-Federal employers and clients (for a one-year period (or for a two-year period if you received an extraordinary payment from the former employer)); and
- P organizations (other than political parties) in which you are an active participant.

Exceptions. When the need of the Government in your participation outweighs appearance concerns, special authorization to participate in the matter may be available. The Ethics Division can prepare the necessary documentation in such cases.

GIFTS, BRIBES, AND SALARY SUPPLEMENTATION

Basic Principle: Avoid Undue Influence

General Rule concerning Bribes and Salary Supplementation. You may not receive anything of value from a non-Federal source for taking action or failing to take action in your Government position. You also may not accept payment for performing your official duties from a source other than the Government.

General Rule concerning Personal Gifts from Non-Federal Sources. You may not accept gifts from a person or firm that has a contract, a grant, or other business with the Department or is seeking such business; is regulated by the Department; or has interests that may be affected by performance of your duties. You also may not accept gifts given to you because of your Government position. Gifts to your spouse or minor children are considered gifts to you in most circumstances.

Exceptions regarding Personal Gifts. You may, under regulatory exceptions, accept:

- P gifts of \$20 or less (other than cash) (up to \$50 per year from the same source);
- P gifts based on a personal relationship (such as from a relative or friend);
- P invitations to widely-attended events (if from the host (generally) and if your supervisor approves your attendance as in the interest of your agency);
- P items of little intrinsic value (such as cards, plaques, trophies);
- P discounts available to a broad range of persons;
- P awards and honorary degrees (in specified circumstances);
- P meals, lodging, transportation, and other benefits offered because of an outside business relationship or outside employment (or your spouse's business or employment);
- P business meals overseas, if a foreign national is present (up to the *per diem* for the city); and
- P gifts from a foreign government of \$285 or less; gifts of over \$285 may be accepted, but become property of the United States Government.

General Rule concerning Gifts between Employees. You may not offer a gift to a supervisor or accept a gift from a subordinate.

Exemptions concerning Gifts between Employees. You may, under regulatory exemptions, offer to a supervisor or accept from a subordinate:

- P a gift on a special, infrequent occasion (such as the birth or adoption of a child, recovery from a serious illness, retirement, or a wedding);
- P items of \$10 or less, given occasionally;
- P food shared in the office;
- P personal hospitality at one's home; or
- P a gift to a host or hostess.

Gifts to the Government. All Federal agencies may accept (but not solicit) travel payments for employees to attend meetings and similar functions. In addition, the Department of Commerce and its components may accept other payments and goods and services to support agency programs. However, a gift may be accepted only if acceptance would not create an appearance of impropriety.

NON-FEDERAL EMPLOYMENT AND OUTSIDE ACTIVITIES

Basic Principle: Avoid Divided Loyalties

General Rule on Outside Activities. You may not engage in outside employment or any other outside activity that conflicts with your Government position, including employment that requires disqualification from significant duties and activities that create an appearance of using your public office for private gain. (Disqualification is required from matters affecting private employers.) Regulations establish special rules when working overseas.

Working for a Foreign Government. The Emoluments Clause of the U.S. Constitution prohibits you from accepting any compensation, including salary or travel expenses, from any foreign government, except as authorized by statute. National Institute of Standards and Technology employees are authorized by statute to accept fellowships or similar positions to perform scientific activities and to accept compensation related to such work from foreign governments.

Outside Practice of Law. There are special rules for engaging in the practice of law. Most *pro bono* activities are allowed as long as the individual or organization seeking *pro bono* services does not have business before your agency and the activity does not include representation before a Federal agency or Federal court. Other situations will need to be determined on a case-by-case basis. If you are an attorney, you should consult your applicable bar rules as well as Federal ethics rules.

Teaching, Speaking, and Writing. You may generally teach courses at accredited colleges, universities, and other educational institutions if such activity will not interfere with the performance of your Government duties. However, there may be restrictions on receiving payments for other types of teaching, speaking, or writing which relate to official duties. Call the Ethics Division for specific advice.

General Rules concerning Engaging in Political Activities. You may not engage in political activities during duty hours or while on Government premises (unless you are a Presidential appointee in a position requiring Senate confirmation). However, unless you are a career SES member, an administrative law judge, or a NOAA Corps officer, you may actively engage in political activities during non-duty hours, except that you may not solicit or receive campaign contributions or host a fund-raiser at any time. You also may not run for office in a partisan political election (except as an independent candidate in certain localities—contact the Ethics Division for a list of jurisdictions in which you may run as an independent candidate). In addition, you may not use Government equipment, supplies,

services, staff, or your Government title for partisan political purposes.

For more information, contact the Ethics Division for advice or to obtain a handout further explaining the rules regarding engaging in political activities.

LOBBYING THE GOVERNMENT

Basic Principle: Avoid Divided Loyalties

General Rule. You may not serve as an agent or attorney before any Federal agency or Federal court, unless authorized as part of your official duties; this generally bars any communication on behalf of someone to a Federal agency or court to influence Government action. Furthermore, you may not receive any payments that are based on the representational activities of others before a Federal agency or Federal court during a period in which you served as a Federal employee.

Exceptions. You may represent other Federal employees in some personnel disputes if you do not receive compensation and you may represent your parents, spouse, children, or an estate or trust, if you receive prior approval. You may also represent, without compensation, professional, recreational, and similar groups before the Government if the majority of the organization's members are Federal employees or their spouses or dependents, provided that the matter does not involve claims against the Government, proceedings in which the organization is a party, or Government financial benefits to the organization. Contact the Ethics Division if you need to obtain approval to represent others before the Government.

MISUSE OF GOVERNMENT POSITION AND RESOURCES

Basic Principle: Thou Shalt Not Steal

General Rule. You may only use Government resources for official, authorized Government activities. This includes Government equipment, supplies, services, and the time of Government personnel. Furthermore, your title may not be used in connection with non-Government activities. Information you learn as part of your Federal employment may not be used for private activities, unless it is information readily available to the public.

at large. Restrictions on personal use apply to nonpublic trade data, economic analyses, private personnel information, census data, and other nonpublic information.

Exception to the General Rules regarding Use of Your Title and Frequent Flier

Benefits. You may use your Government title in connection with personal activities as part of general biographical data if it is given no more prominence than other significant biographical details. Regarding frequent flier benefits, you may use frequent flier miles and other benefits obtained from Government travel for personal purposes, including personal travel or upgrades on official travel.

Internet and E-mail Services. You may use Government access to the Internet and e-mail if it does not interfere with performance of your duties or office operations, unless your agency has a policy prohibiting such use. However, you may not use Government access to the Internet or e-mail at any time for:

- P operating a commercial business or profit-making venture;
- P partisan political activities;
- P prohibited lobbying activities;
- P any use that results in an additional charge to the Government;
- P engaging in prohibited discriminatory conduct;
- P obtaining or viewing sexually explicit material;
- P any activity that would discredit the Department; or
- P any action that would violate a statute or regulation.

Employees are also permitted to use office printers for personal Internet and e-mail uses, provided it does not consume excessive resources.

SEEKING EMPLOYMENT

Basic Principle: Avoid Divided Loyalties

General Rule. While you are a Federal employee, you may enter into discussions or agreements regarding future employment with anyone. However, once you begin to seek non-Federal employment you must disqualify yourself from participating as a Government employee on any matter likely to affect an entity that you have contacted, or that has contacted you, regarding future employment. This restriction applies whether the contact is direct or through an intermediary, such as a headhunter. Your disqualification must continue until you leave Federal service, either you or the prospective employer rejects future employment, or two months have passed without a response since you sent an unsolicited employment proposal (such as a résumé).

Special Rule for Procurement Officials. If you are participating in a procurement of more than \$100,000, you must report prospective employment contacts with or from a competing contractor to your supervisor and the Ethics Division in writing.

POST-EMPLOYMENT RESTRICTIONS

Basic Principle: Avoid Misuse of Your Prior Federal Relationship

General Rules. After leaving Federal service, you will be permanently barred from representing anyone before a Federal agency or Federal court concerning any specific-party matter (such as a contract, license, litigation, or trade agreement) if you participated in the matter personally and substantially while with the Government. You also will be barred for two years from representing anyone concerning a specific-party matter that was pending under your official responsibility during the last year of your Government service, such as a matter on which a subordinate worked.

Representational activities include lobbying and other communications to Government officials with the intent to influence Government action, but do not generally include behind-the-scenes activities, or requests for publicly-available information. You will also be barred from disclosing confidential information regarding an on-going treaty negotiation.

Rule for Senior Employees. If you are a senior employee (which includes employees paid at 86.5% of the Executive Level II pay rate (\$140,216 in 2005) or higher or employees who were paid at or greater than SES level 5 on 11/23/2003), you will be barred for one year from contacting your former agency or from representing or assisting in representing a foreign government or foreign political party in matters involving the United States Government.

Special Rules. Additional rules concerning post-employment conduct apply to procurement officials (persons substantially involved in a Federal procurement), attorneys, and U.S. Patent and Trademark Office employees (regarding obtaining patent rights). There are also special rules applicable to all employees regarding using or disclosing nonpublic Government information and testifying in court on matters relating to your Federal position or to Federal programs.

Exceptions to Post-Employment Restrictions. There are exceptions to some post-employment restrictions, such as for representing a state or local government, international organization, educational institution, or medical institution, in certain

circumstances. There is also an exception relating to testifying that is applicable to some of the post-employment restrictions. For a handout on this topic, contact the Ethics Division at 202-482-5384.

FINANCIAL DISCLOSURE

Basic Principle: Tell the Whole Truth

Basic Guidelines. Presidential Appointees, members of the Senior Executive Service, employees in non-career policy-making positions, procurement officials, and other employees whose performance of Federal duties could have a significant impact on the interests of members of the public are required to file financial disclosure reports. These are collected upon entry into a position for which such reports are required and annually thereafter. If you are designated as required to file such a report, please keep in mind that the information you disclose is used to provide advice to you in order to ensure that you do not inadvertently engage in prohibited activities. In order to provide this advice (and to certify that the report includes all necessary information), it is important that the information you provide be as complete as possible. Specifically, please be sure to include the following information:

- P the full name of any mutual fund (not just the generic name of the company managing the fund);
- P specific holdings in any IRA, 401(k) account, trust, or investment account;
- P a short description of the activities or industry sector of any privately-held company or limited partnership; and
- P assets and sources of income of your spouse (and dependant children).

EXAMPLES

NO PROBLEM

1. An employee works on a contract with a company in which she holds \$8,000 worth of publicly-traded stock.
2. An analyst works on a grant application from a company for which he worked 3 years ago.
3. An employee does outside work for a contractor with no work before her office.
4. A employee accepts a \$15 lunch from an agency grantee.
5. An employee gives a pen valued at \$35 to his supervisor as a retirement gift.
6. An employee accepts an invitation from a trade association to a widely-attended reception with her supervisor's approval.
7. An employee uses her agency computer to send a personal e-mail.
8. A financial disclosure report filer lists as an asset "Fidelity Growth Fund."

PROBLEM

1. An employee works on a contract with a company in which she holds \$18,000 worth of public-traded stock.
2. An analyst works on a grant application from a company for which he worked 3 months ago.
3. An employee does outside work for a contractor with work before her office.
4. A employee accepts a \$25 lunch from an agency grantee.
5. An employee gives a pen valued at \$35 to his supervisor as a birthday gift.
6. An employee accepts an invitation from a trade association to a widely-attended concert with her supervisor's approval.
7. An employee uses her agency stationery to send a personal letter.
8. A financial disclosure report filer lists as an asset "Fidelity mutual fund."

**For more information about any of these rules contact the
Ethics Division at 202-482-5384.**

CITATIONS TO APPLICABLE LAW

Financial Conflicts of Interest

18 United States Code (U.S.C.) § 208; 35 U.S.C. § 4
5 Code of Federal Regulations (C.F.R.) §§ 2635.401 - 2635.403, 2635.502,
2640.201 - 2640.202
3 Foreign Affairs Manual (FAM) Part 4120

Appearances of Bias based on Outside Relationships

5 C.F.R. §§ 2635.501 - 2635.503

Gifts, Bribes, and Salary Supplementation

5 U.S.C. §§ 7342, 7351, and 7353; 15 U.S.C. § 1522; 18 U.S.C. §§ 201 and 209
5 C.F.R. §§ 2635.201 - 2635.205, 2635.301 - 2635.304; 41 C.F.R. Part 304-1

Outside Activities (including Lobbying the Government)

5 U.S.C. §§ 7321 - 7326; 18 U.S.C. §§ 203, 205, and 208
5 C.F.R. §§ 734.201 - 734.702, 2635.801 - 2635.809
3 FAM Part 4120

Misuse of Government Position and Resources

18 U.S.C. § 641
5 C.F.R. §§ 2635.701 - 2635.705
Department of Commerce Internet Use Policy

Seeking Employment and Post-Employment Restrictions

18 U.S.C. § 207; 41 U.S.C. § 423
5 C.F.R. Parts 2635, 2637, and 2641; 15 C.F.R. §§ 15.11-15.18

*Prepared by the Ethics Division, Office of the Assistant General Counsel for
Administration, United States Department of Commerce – January 3, 2005*